

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CAROL J. BEAUDU, individually and in her  
capacity as administrator of the estate of  
MARCEL R. BEAUDU, DANIELLE  
BEAUDU and EVAN BEAUDU,

Plaintiffs,

v.

STARWOOD HOTELS AND RESORTS  
WORLDWIDE, INC.,

Defendant.

No. C04-2137Z

ORDER

**I.**

Marcel Beaudu, a FedEx international airline pilot, experienced a heart attack and died while staying at the Sheraton Hong Kong Hotel & Towers (“the Hotel”) in Kowloon, Hong Kong, on October 22, 2001. Complaint, docket no. 1, at ¶¶ 1, 10. Mr. Beaudu’s stay was arranged, scheduled, and paid for by his employer, Federal Express Corporation (“FedEx”), under a Flight Crew Housing Agreement with the Hotel. Taeger Decl., docket no. 23, at ¶¶ 3, 4, 6. The Hotel was owned by Consolidated Hotels Limited (“CHL”), a Hong Kong corporation with its registered offices in Hong Kong. Arawwawela Decl., docket no. 19, at ¶ 4. The Hotel was operated by Sheraton International Hong Kong Limited (“SIHKL”), a Hong Kong corporation with its registered offices in Hong Kong. *Id.* at ¶ 3.

1 At the time of Mr. Beaudu's death, SIHKL was owned by Sheraton International, Inc., a  
2 Delaware corporation, which was owned by Sheraton Corporation, a Delaware corporation,  
3 which was owned by Sheraton Holding Corporation, a Nevada corporation, which was  
4 owned by the Defendant in this action, Starwood Hotels and Resorts Worldwide, Inc.  
5 ("Starwood"). D'Alessandro Decl., docket no. 21, at ¶ 6.

6 This action is brought by Carol Beaudu, administrator of the estate of Marcel Beaudu.  
7 Ms. Beadu also filed and served a separate wrongful death and survival action in Hong Kong  
8 against SIHKL, the operator of the Hotel. Wallace Decl., docket no. 25, ¶¶ 3-5, Tuffley  
9 Decl., docket no. 24, Exs. D-F; Leung Decl., docket no. 22, ¶ 3. In the Hong Kong action,  
10 Plaintiff Carol Beaudu alleges that SIHKL negligently operated the Hotel. See Tuffley  
11 Decl., docket no. 24, Exs. D, E. Defendant SIHKL admits that it operated the Hotel.  
12 Tuffley Decl., docket no. 24, ¶ 9; Arawwawela Decl., docket no. 19, ¶¶ 3, 5-7.

13 Plaintiffs allege Defendant Starwood negligently failed to establish and implement a  
14 policy for summoning emergency medical assistance consistent with the standard of care in  
15 the industry, delayed summoning medical assistance, and failed to summon an ambulance  
16 with automatic defibrillation capability. Complaint, docket no. 1, ¶ 12.

## 17 II.

18 Defendant moves for dismissal of Plaintiffs' wrongful death and survival claims  
19 pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), on grounds that Carol Beaudu is not the  
20 personal representative of the estate. See Motion to Dismiss, docket no. 18. At the time of  
21 the filing, Carol Beaudu had been discharged as personal representative. However, on April  
22 27, 2005, Ms. Beaudu petitioned for reappointment as personal representative of her  
23 deceased husband's estate. See Withey Decl., docket no. 31, Ex. A. That petition was  
24 granted. Id., Ex. B. Fed. R. Civ. P. 17(a) provides a liberal standard for the substitution of  
25 the real party in interest, and for relation back to the date of filing. Defendant's Reply does  
26 not argue Ms. Beaudu's reappointment is not effective back to the date of filing. Thus, the

1 Court DENIES Defendant's Motion to Dismiss Carol J. Beaudu's claims as personal  
2 representative of the estate, docket no. 18.

3 **III.**

4 Defendant has moved the Court for abstention under the Colorado River doctrine, or  
5 dismissal under the doctrine of *forum non conveniens*. Central to both inquiries is choice of  
6 law. Federal courts in diversity apply the forum state's choice of law rules where a conflict  
7 exists. Klaxon v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941). The parties agree that  
8 Washington and Hong Kong law do not conflict with regard to liability. However, a conflict  
9 exists with regard to damages. Bereavement damages are limited under Hong Kong law to  
10 \$150,000 Hong Kong dollars, or approximately \$19,000 U.S. dollars.

11 In addressing choice of law, Washington follows the "most significant relationship"  
12 test under the Restatement (Second) of Conflict of Laws to determine which jurisdiction's  
13 substantive law will apply. Williams v. State, 76 Wash. App. 237, 241 (1994). The "most  
14 significant relationship" test is not merely the counting of contacts but consideration of  
15 contacts which are most significant. See Southwell v. Widing Transp., Inc., 101 Wash. 2d  
16 200, 204 (1984). Contacts considered include (a) the place where the injury occurred; (b)  
17 the place where the conduct causing the injury occurred; (c) the domicile, residence,  
18 nationality, place of incorporation and place of business of the parties; and (d) the place  
19 where the relationship, if any, between the parties is centered.

20 Here, there is no allegation of wrongdoing in Washington, and the only connection to  
21 Washington is Mr. Beaudu's residence here. Washington's interest in seeing its residents  
22 compensated for injuries is not overriding where other contacts with Washington are  
23 minimal. Rice v. Dow Chem. Co., 124 Wash. 2d 205, 216 (1994).

24 Although [residency] is a real interest, recognizing this as an overriding concern,  
25 despite the lack of contacts, would mean that Washington law would be applied  
26 in all tort cases involving any Washington resident, regardless of where all the  
activity relating to the tort occurred. Furthermore, residency in the forum state  
alone has not been considered a sufficient relation to the action to warrant  
application of forum law. See, e.g., Restatement (Second) of Conflict of Law §

145 cmt. e (1971) (“The fact . . . that one of the parties is domiciled . . . in a given state will usually carry little weight of itself.”)

2 Id. Plaintiffs argue that “the [jurisdiction] where the injury occurs does not have a strong  
3 interest in compensation if the injured plaintiff is a non-resident.” See, e.g., Bryant v.  
4 Silverman, 703 P.2d 1190, 1194 (Ariz. 1985); see also Card v. American Brands Corp., 401  
5 F. Supp. 1186 (S.D.N.Y. 1975) (Loss of consortium claim for an accident in Virginia was a  
6 claim of injury “to the marriage -- an incident of Oregon.”). However, the numerous  
7 connections to Hong Kong in this case compel a finding that Hong Kong has the most  
8 significant relationship to this action. The injury occurred in Hong Kong. Hong Kong is the  
9 place of incorporation for the owner and operator of the Hotel. Hong Kong is the place of  
10 performance of the Crew Housing Agreement between FedEx and the Hotel. Hong Kong is  
11 the location where the Hotel operator is alleged to have negligently operated the Hotel, and  
12 where Starwood is alleged to have negligently participated in the operation of the Hotel.  
13 Accordingly, for the purposes of this motion, the Court finds that Hong Kong law would  
14 apply where a conflict of law exists.

### 15 **Forum Non Conveniens**

16 Defendant Starwood moves for dismissal under the doctrine of *forum non conveniens*.  
17 The doctrine of *forum non conveniens* is based on the inherent power of the courts to decline  
18 jurisdiction in exceptional circumstances. Paper Operations Consultants Int’l, Ltd. v. SS  
19 Hong Kong Amber, 513 F.2d 667, 670 (9th Cir. 1975). The doctrine requires that the court  
20 have jurisdiction and venue, and a threshold determination that an alternative forum exists.  
21 Piper Aircraft Co. v. Reyno, 454 U.S. 235, 254 (1981).

22 The plaintiff’s choice of forum should rarely be disturbed. See Gulf Oil Corp. v.  
23 Gilbert, 330 U.S. 501 (1947); Koster v. Lumbermens Mut. Cas. Co., 330 U.S. 518 (1947).  
24 However, when an alternative forum has jurisdiction to hear the case, and when trial in the  
25 chosen forum would “establish . . . oppressiveness and vexation to a defendant . . . out of all  
26 proportion to plaintiff’s convenience,” or when the “chosen forum [is] inappropriate because

1 of considerations affecting the court's own administrative and legal problems," the court  
2 may, in the exercise of its sound discretion, dismiss the case. Koster, 330 U.S. at 524. The  
3 Court should consider both "private interest factors" affecting the litigants and "public  
4 interest factors" affecting the forum in determining whether dismissal is appropriate.  
5 Gilbert, 330 U.S. at 508-509.

6 The Court previously determined that the courts in Hong Kong are an adequate  
7 alternative forum, and that for the purposes of this analysis, Hong Kong law would apply  
8 where there is a conflict of law.

9 **1. Private Interest Factors**

10 Factors pertaining to the private interests of litigants include the "relative ease of  
11 access to sources of proof; availability of compulsory process for attendance of unwilling,  
12 and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if  
13 view would be appropriate to the action; and all other practical problems that make trial of a  
14 case easy, expeditious and inexpensive." Gilbert, 330 U.S. at 508.

15 *a. Sources of proof*

16 The events relating to Mr. Beaudu's death took place in Hong Kong; the parties agree  
17 that nearly all of the witnesses to those events reside in Hong Kong. See Def. Motion,  
18 docket no. 17, at 15. Plaintiffs' argument that its experts reside in Washington State, and  
19 that Starwood's policy and procedure witnesses reside in the United States, is unpersuasive.  
20 Pl. Response, docket no. 27, at 19. The Court acknowledges that expert testimony, and  
21 policy and procedure testimony, may play an important role in this case. However,  
22 numerous fact witnesses are located in Hong Kong and will have no interest in this litigation  
23 apart from their involvement in the incidents in Hong Kong. Nearly all sources of proof  
24 relating to this action are centered in Hong Kong. As such, the Court concludes that this  
25 factor strongly favors proceedings in Hong Kong.

1           *b. Availability of witnesses*

2           The availability of compulsory process to obtain the attendance of hostile witnesses,  
3 and the cost of transporting friendly witnesses, is an important consideration in determining  
4 the best location for proceedings. Plaintiff argues that because Starwood owns Sheraton  
5 Hotels, it will not have difficulty securing the cooperation of employees. However, this  
6 argument does not favor of proceedings in the United States because it ignores the witnesses  
7 who are not employees of Sheraton Hotels, the added cost, and the unavailability of  
8 compulsory process. All Hong Kong witnesses, including staff, management, ambulance  
9 personnel, physicians, hospital staff, and mortuary staff, would not be subject to compulsory  
10 process. Starwood cannot be presumed to have control over these witnesses. Moreover,  
11 proceedings in the United States would be extraordinarily inconvenient for these witnesses.  
12 The inconvenience to Plaintiff is mitigated somewhat because she is participating in a  
13 separate Hong Kong action. This factor weighs in favor of proceedings in Hong Kong.

14           *c. View of premises*

15           Defendant does not argue a need to view the premises of the Hotel in Hong Kong, and  
16 this factor does not assist the Court in determining the most convenient forum.

17           *d. Policy favoring an expeditious trial*

18           Hong Kong proceedings and procedures will be more effective in obtaining  
19 documents and testimony from witnesses and sources related to this incident than would the  
20 procedures of this Court, as applied in Hong Kong. Discovery will be more efficient and  
21 less expensive when conducted by local courts. Because Hong Kong law will apply, the  
22 Hong Kong court is better suited to applying its own law to the facts of this case. Plaintiff's  
23 argument that this case would be more efficiently and conveniently tried in Seattle, where  
24 this Court is unfamiliar with Hong Kong law and unable to compel the production of any  
25 evidence or the testimony of any witness, is unpersuasive. The policy favoring an  
26 expeditious trial supports proceedings in the Hong Kong forum.

1     **2.     Public Interest Factors**

2             Public factors include the administrative difficulties flowing from court congestion;  
3     the “local interest in having localized controversies decided at home”; the interest in having  
4     the trial in a forum that is at home with the law that must govern the action; the avoidance of  
5     unnecessary problems in conflict of laws, or in the application of foreign law; and the  
6     unfairness of burdening citizens in an unrelated forum with jury duty. Gilbert, 330 U.S. at  
7     509.

8             *a.     Administrative difficulties*

9             Duplicative litigation of foreign events imposes an administrative burden on the  
10     Courts and the administrative burden flowing from court congestion must be considered as  
11     part of the Court’s analysis. This duplicative litigation mirrors proceedings in a foreign  
12     court, and imposes an additional administrative burden on the federal courts. In addition,  
13     duplicative litigation of foreign events imposes a litany of administrative difficulties on the  
14     court system, and thus favors proceedings in the foreign forum.

15            *b.     Local interest in having the matter decided locally*

16            This controversy is localized in Hong Kong and Hong Kong has an interest in having  
17     the matter decided locally. At the time of the incident Mr. Beaudu was a guest in a Hong  
18     Kong Hotel owned and operated by a Hong Kong corporation. He was attended to by  
19     paramedics and physicians in Hong Kong, and treated in a Hong Kong Hospital. His  
20     autopsy took place in Hong Kong, and his death was investigated by Hong Kong authorities.  
21     The negligence alleged would have occurred in Hong Kong. Hong Kong has a strong  
22     interest in these events and in this litigation, and a unique interest in applying Hong Kong  
23     law. Moreover, Plaintiff does not seek enforcement of federal law, and brings this suit in  
24     diversity only. This factor favors the Hong Kong forum.


4 || *d. Avoidance of unnecessary problems in conflict of laws*

8 *e. Burden of jury duty on citizens in an unrelated forum*

13           The public and private interest factors weigh heavily in favor of the Hong Kong forum  
14 and in favor of dismissal for *forum non conveniens*. Because the Court concludes that *forum*  
15 *non conveniens* dismissal is appropriate, the Court does not reach the issue of abstention.

16 **IV.**

21 IT IS SO ORDERED.

  
Thomas S. Zilly  
United States District Judge



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